

FILED

NOV 21 2000

1

IN THE UNITED STATES DISTRICT COURT
 FOR THE WESTERN DISTRICT OF TEXAS
 AUSTIN DIVISION

CLERK, U.S. DISTRICT COURT
 WESTERN DISTRICT OF TEXAS
 BY M DEPUTY CLERK

UNITED STATES OF AMERICA) Docket No. A 99-CR-274 SS
)
 v.) Austin, Texas
)
 GARY PAUL KARR) May 30, 2000

VOLUME 10 of 12
 TRIAL ON THE MERITS
 BEFORE THE HONORABLE SAM SPARKS

APPEARANCES:

For the United States: Mr. Gerald C. Carruth
 Mr. Daniel H. Mills
 Assistant U.S. Attorneys
 816 Congress Avenue, Ste. 1000
 Austin, Texas 78701

For the Defendant: Mr. Thomas W. Mills, Jr.
 Ms. Christi N. Williams
 Mills & Presby
 5910 North Central Expressway,
 Ste. 900
 Dallas, Texas 75206-5141

Court Reporter: Lily Iva Reznik, RPR, CRR
 United States Courthouse
 200 West 8th Street
 Austin, Texas 78701
 Ph: (512)916-5564

Proceedings recorded by mechanical stenography, transcript
 produced by computer.

LILY I. REZNIK
 UNITED STATES DISTRICT COURT
 WESTERN DISTRICT OF TEXAS (AUSTIN)

ORIGINAL

104

I N D E X

	<u>Page</u>
Government's Closing Statements	31
Defendant's Closing Statements	47
Government's Closing Statements	71
Proceedings Adjourned	84

1 THE COURT: Counsel, from the draft that was finally
2 put together last Thursday, over the weekend or this morning
3 early, you called and there are a couple of typographical
4 changes that my staff has already put in. If you'll turn to
5 page 11, on the definition of "decoy," the word entire should
6 be "entice," and it is in there. So the definition of decoy
7 is, to decoy means to entice or lure, and I made that
8 correction.

9 And this morning, y'all have called my attention, on
10 page 14, that the word "further" should be "furtherance" in
11 the fourth paragraph, and that change has been made. And
12 then, on page 16, and the top of the page on "Third," where
13 the next to the last line read, "transfer of approximately
14 \$600,000 by, through and" will be changed to "and/or to a
15 financial institution."

16 And then, in the verdict form itself, on the front
17 page, on the first paragraph, after Count 3, I'm adding one
18 word to that paragraph so that it would read: "Do you find
19 beyond a reasonable doubt that the offense charged in Count 3
20 resulted in the death of another person." I'm adding the word
21 "person."

22 Let the record reflect that the lawyers read the
23 charge. All right. With that, are there any additional
24 instructions or additions?

25 MR. CARRUTH: Nothing further from the government,

1 your Honor.

2 MR. T. MILLS: None from the defense.

3 THE COURT: I think we're still shy a couple of
4 jurors, so we'll just stand at ease until we find out.

5 (Jury present.)

6 THE COURT: All right. Now, I want honest answers.
7 How many of you stayed up till 1:15 in the morning to make
8 sure that Texas won that second game against Arizona State? I
9 didn't either. I'm surprised to see it.

10 Members of the jury, since we left you on Thursday or
11 you left us on Thursday, has anybody attempted to talk to you
12 about this case?

13 THE JURORS: No.

14 THE COURT: Have you talked to anyone about this case?

15 THE JURORS: No.

16 THE COURT: And have you learned anything at all about
17 the case outside the presence of each other and this
18 courtroom?

19 THE JURORS: No.

20 THE COURT: All right. Thank you. Let the record
21 reflect that all answers were negative to all questions by all
22 jurors.

23 Members of the jury, I'm about to read you the legal
24 instructions in this case. You're not required to memorize
25 them because I will give you -- after I put this mic down -- I

1 will give you these legal instructions in writing. You will
2 have them with you when you deliberate. Notwithstanding the
3 fact I have a little voice, I'm required to read the
4 instructions so that then the lawyers who have a copy of the
5 instructions have the right to use those instructions in their
6 closing remarks.

7 Members of the jury, you have heard all of the
8 evidence in the case. I will now instruct you on the rules of
9 law that you must follow and apply in arriving at your
10 decision in the case. After I read these instructions, the
11 lawyers have the right to make their final presentation and
12 thereafter, you will begin deliberation.

13 In any jury trial, there are, in effect, two judges.
14 The Court is one of the judges and you are the other. It is
15 my duty to preside over the trial and to determine what
16 evidence is relevant under the law for your consideration. It
17 is also my duty at the end of the trial to instruct you on the
18 law applicable to this case.

19 You, as jurors, are the judges of the facts. But in
20 determining what actually happened, that is, in reaching your
21 decision as to the facts, it is your sworn duty to follow all
22 of the rules of law as I explain them to you.

23 You have no right to disregard or give special
24 attention to any one instruction or to question the wisdom or
25 the correctness of any rule I may state to you. You must not

1 substitute or follow your own notion or opinion as to what the
2 law is or ought to be. It is your duty to apply the law as I
3 explain it to you, regardless of the consequences.

4 It is also your duty to base your verdict solely upon
5 the evidence, without prejudice or sympathy. That was the
6 promise you made and the oath that you took before being
7 accepted by the parties as jurors, and they have the right to
8 expect nothing less.

9 The indictment or formal charge against the defendant
10 is not evidence of guilt. Indeed, the defendant is presumed
11 by the law to be innocent. You must presume that the
12 defendant is innocent throughout your deliberations until such
13 time, if ever, you as a jury are satisfied that the government
14 has proved him guilty beyond a reasonable doubt. Unless you
15 are satisfied beyond a reasonable doubt that the defendant is
16 guilty, the presumption alone is sufficient to find the
17 defendant not guilty.

18 In other words, the law does not require the defendant
19 to prove his innocence or produce any evidence at all. The
20 government has the burden of proving the defendant guilty
21 beyond a reasonable doubt, and if it fails to do so, you must
22 acquit the defendant.

23 While the government's burden of proof is a strict or
24 heavy burden, it is not necessary that the defendant's guilt
25 be proved beyond all doubt. It is only required that the

1 government's proof exclude any reasonable doubt concerning the
2 defendant's guilt.

3 A reasonable doubt is a doubt based upon reason and
4 common sense, after careful and impartial consideration of all
5 the evidence in the case. Proof beyond a reasonable doubt,
6 therefore, is proof of such a convincing character that you
7 would be willing to rely and act upon it without hesitation in
8 the most important of your own affairs.

9 I caution you, members of the jury, that you are here
10 to determine the guilt or innocence of the defendant from the
11 evidence in this case. You are not called upon to return a
12 verdict as to the guilt or innocence of any other person or
13 persons other than the defendant in this case. Moreover the
14 defendant is not on trial for any act or conduct or offense
15 not alleged in the indictment.

16 You must determine the facts -- in determining the
17 facts, you must consider only the evidence presented during
18 the trial, including the sworn testimony of the witnesses and
19 exhibits admitted into evidence.

20 Remember that any statements, objections, or arguments
21 made by the lawyers are not evidence. The function of the
22 lawyers is to point out those things that are most significant
23 or helpful to their side of the case and, in doing so, to call
24 your attention to certain facts or inferences that might
25 otherwise escape your notice. In the final analysis, however,

1 it is your own recollection and interpretation of the evidence
2 that controls in the case. What the lawyers say is not
3 binding on you.

4 Do not assume for anything that I may have done or
5 said during this trial that I have any opinion concerning any
6 of the issues in this case. Except for the instructions to
7 you on the law, you should disregard anything I may have said
8 during the trial in arriving at your own findings as to the
9 facts.

10 While you should consider only the evidence in the
11 case, you are permitted to draw such reasonable inferences
12 from the testimony and the exhibits as you feel are justified
13 in the light of common experience. In other words, you may
14 make deductions and reach conclusions that reason and common
15 sense lead you to draw from the facts that have been
16 established by the testimony and the evidence in the case.

17 It is reasonable to infer that a person ordinarily
18 intends the natural and probable consequences of his knowing
19 acts. You may draw the inference that the accused intended
20 all of the consequences which one standing in like
21 circumstances and possessing like knowledge should reasonably
22 have expected to result from any intentional act or conscious
23 omission. Any such inference drawn is entitled to be
24 considered by you in determining whether or not the government
25 has proved beyond a reasonable doubt that the defendant

1 possessed the required criminal intent.

2 In considering the evidence, you should not be
3 concerned whether the evidence is direct evidence or
4 circumstantial evidence. Direct evidence is the testimony of
5 one who asserts actual knowledge of a fact, such as an
6 eyewitness. Circumstantial evidence is proof of a chain of
7 facts or circumstances indicating that the defendant is either
8 guilty or not guilty. The law makes no distinction between
9 the weight you may give to either direct or circumstantial
10 evidence. It requires only that you weigh all of the evidence
11 and convinced -- and be convinced of the defendant's guilt
12 beyond a reasonable doubt before he can be convicted.

13 I remind you that it is your job to decide whether the
14 government has proved the defendant, Gary Paul Karr, is guilty
15 beyond a reasonable doubt. In making a determination on the
16 innocence or guilt of the defendant, you must consider all of
17 the evidence admitted for or against the defendant. This does
18 not mean, however, that you must accept all of the evidence as
19 true or accurate.

20 You are the sole judges of the credibility or the
21 believability of each witness and the weight to be given each
22 witness' testimony. An important part of your job will be
23 making judgments about the testimony of the witnesses who
24 testified in the case. You should decide whether you believe
25 what each person had to say, and how important that testimony

1 was. In making that decision, I suggest that you ask yourself
2 a few questions. Did the person impress you as honest? Did
3 the witness have any particular reason not to tell the truth?
4 Did the witness have a personal interest in the outcome of the
5 case? Did the witness have any relationship with either the
6 government or the defense? Did the witness seem to have a
7 good memory? Did the witness have the opportunity and ability
8 to understand the questions clearly and answer them directly?
9 Did the witness' testimony differ from the testimony of other
10 witnesses? These are a few of the considerations that may
11 help you to determine the accuracy of what each witness said.

12 In evaluating the identification testimony of a
13 witness, you should consider all the factors already mentioned
14 concerning your assessment of the credibility of any witness
15 in general, and you should also consider, in particular,
16 whether the witness had an adequate opportunity to observe the
17 person in question at the time or times about which the
18 witness testified. You may consider, in that regard, such
19 matters as the length of time the witness had to observe the
20 person in question, the prevailing conditions at the time in
21 terms of visibility or distance and the like, and whether the
22 witness had known or observed the person at earlier times.
23 You may also consider the circumstances surrounding the
24 identification itself, including, for example, the manner in
25 which the defendant was presented to the witness for

1 identification, and the length of time that elapsed between
2 the incident in question and the next opportunity the witness
3 had to observe the defendant.

4 During the trial, you've heard the testimony of
5 several forensic scientists who expressed opinions concerning
6 DNA analysis and other evaluations. The rules of evidence
7 provide that if scientific, technical, or other specialized
8 knowledge might assist the jury in understanding the evidence
9 or in determining a fact in issue, a witness qualified as an
10 expert by knowledge, skill, experience, training, or education
11 may testify and state an opinion concerning such matters.
12 Merely because an expert witness has expressed an opinion does
13 not mean, however, that you must accept the opinion. As with
14 any other witness, it is up to you to decide whether you
15 believe the testimony and choose to rely upon it. Part of
16 that decision will depend on your judgment about whether the
17 witness' background or training and experience is sufficient
18 for the witness to give the expert opinion you heard. You
19 must also decide whether the witness' opinion were based on
20 sound reasons, judgment and information.

21 A defendant in a criminal case has a right secured by
22 the Constitution of the United States to either testify as a
23 witness in the case or decline to do so. In this case, the
24 defendant has chosen to exercise his constitutional rights not
25 to testify. You may not discuss or consider the defendant's

1 decision not to testify in any manner when deliberating and in
2 arriving at your verdict. No inference of any kind may be
3 drawn from the fact that the defendant decided to exercise his
4 privilege under the Constitution and not testify.

5 In making up your mind and reaching a verdict, do not
6 make any decisions simply because there were more witnesses on
7 one side than the other. Do not reach a conclusion on a
8 particular point just because there were more witnesses
9 testifying for one side on that point. Your job is to think
10 about the testimony of each witness you heard and decide how
11 much of what each witness had to say -- how much you believe
12 of what each witness had to say. You will always bear in
13 mind, however, that the law never imposes upon a defendant in
14 a criminal trial the burden or duty of calling any witnesses
15 or producing any evidence.

16 If a defendant is found guilty, it will be my duty to
17 decide what the punishment will be. You should not be
18 concerned with punishment in any way. It should not enter
19 into your consideration or discussion.

20 And now that I've instructed you on your general
21 duties and the guidelines to follow in reaching a verdict, I
22 will instruct you on the law particular to this case.

23 The term knowingly, as used in these instructions,
24 means that an act was done voluntarily and intentionally and
25 not because of accident or mistake.

1 The term willfully, as used in these instructions,
2 means that an act was committed voluntarily and purposely, and
3 with the specific intent to do something the law forbids; that
4 is to say, with bad purpose either to disobey or disregard the
5 law.

6 The term commerce includes travel, trade,
7 transportation and communication.

8 The term interstate commerce means commerce or travel
9 between one state, territory or possession of the United
10 States and another state, territory or possession of the
11 United States including the District of Columbia.

12 The term foreign commerce means commerce or travels
13 between any part of the United States, including its
14 territorial waters, and any other country, including its
15 territorial Waters.

16 You will note that each count in the indictment
17 charges that an offense was committed, quote, on or about, end
18 quote, a certain date. The proof need not establish with
19 certainty the exact date of the alleged offense. It is
20 sufficient if the evidence in the case establishes beyond a
21 reasonable doubt that the offense was committed on a date
22 reasonably near the date alleged.

23 I instruct you that Austin, Texas and San Antonio,
24 Texas lie within the Western District of Texas.

25 A separate crime is charged in each count of the

1 indictment. Each count and the evidence pertaining to it
2 should be considered separately. The fact that you may find
3 the defendant guilty or not guilty as to one of the crimes
4 charged should not control your verdict as to any other,
5 unless stated otherwise in the instructions for any particular
6 count.

7 The guilt of the defendant in a criminal case may be
8 established without proof that the defendant personally did
9 every act constituting the alleged offense. The law
10 recognizes that, ordinarily, anything a person can do for
11 himself may also be accomplished by that person through the
12 direction of another person as his or her agent, or by acting
13 in concert with, or under the direction of, another person or
14 persons in a joint enterprise or effort.

15 If another person is acting under the direction of the
16 defendant or if the defendant joins another person and
17 performs acts with the intent to commit a crime, then the law
18 holds the defendant responsible for the acts and conduct of
19 such other persons just as though the defendant had committed
20 the acts or engaged in such conduct.

21 Before any defendant may be held criminally
22 responsible for the acts of others, it is necessary that the
23 accused deliberately associated himself in some way with the
24 crime and participated in it with the intent to bring about
25 the crime.

1 Of course, the mere presence at the scene of a crime
2 and knowledge that a crime is being committed are not
3 sufficient to establish that the defendant either directed or
4 aided and abetted the crime unless you find beyond a
5 reasonable doubt that the defendant was a participant and not
6 merely a knowing spectator.

7 In other words, you may not find the defendant guilty
8 unless you find beyond a reasonable doubt that every element
9 of the offense, as defined in these instructions, was
10 committed by some person or persons, and that the defendant
11 voluntarily participated in its commission with the intent to
12 violate the law.

13 A conspiracy is an agreement between two or more
14 persons to join together to accomplish some unlawful purpose.
15 It is kind of a partnership in crime in which each member
16 becomes the agent of every other member.

17 One may become a member of a conspiracy without
18 knowing all of the details of the unlawful scheme or the
19 identities of all of the other alleged conspirators. If a
20 defendant understands the unlawful nature of a plan or scheme
21 and knowingly and intentionally joins in that plan or scheme
22 on one occasion, that is sufficient to convict him for
23 conspiracy even though the defendant had not participated
24 before and even though the defendant played only a minor part.

25 The government need not prove that the alleged

1 conspirators entered into any formal agreement, nor that they
2 directly stated between themselves all the details of the
3 scheme. Similarly, the government need not prove that all of
4 the details of the scheme alleged in the indictment were
5 actually agreed upon or carried out. Nor must it prove that
6 all of the persons alleged to have been members of the
7 conspiracy were such, or that the alleged conspirators
8 actually succeeded in accomplishing their unlawful objectives.

9 Mere presence at the scene of an event, even with the
10 knowledge that the crime is being committed, or the mere fact
11 that certain persons may have associated with each other, and
12 may have assembled together and discussed common aims and
13 interest, does not necessarily establish proof of the
14 existence of a conspiracy. Also, a person who has no
15 knowledge of a conspiracy, but who happens to act in a way
16 which advances some purpose of a conspiracy, does not thereby
17 become a conspirator.

18 You must determine whether the conspiracy charged in
19 the indictment in Counts 1, 2 and 4 existed, and if it did,
20 whether the defendant was a member of it. If you find the
21 conspiracy charged did not exist, then you must return a not
22 guilty verdict, even though you find that some other
23 conspiracy existed. If you find that the defendant was not a
24 member of the conspiracy charged in the indictment, then you
25 must find the defendant not guilty, even though the defendant

1 may have been a member of some other conspiracy.

2 In determining whether the defendant was a member of
3 the alleged conspiracy, you should consider only that
4 evidence, if any, pertaining to his own acts and statements.
5 He is not responsible for the acts or declaration of the other
6 alleged participants until it is established beyond a
7 reasonable doubt, first, that a conspiracy existed, and
8 second, from the evidence of his own acts and statements, that
9 the defendant was one of its members.

10 It does not matter that some of the people who may
11 have been involved in the alleged offense are not on trial.
12 There is no requirement that all members of a conspiracy be
13 charged and prosecuted, or tried together in one proceeding.
14 Nor is there any requirement that the names of other
15 unindicted coconspirators be alleged in the indictment, so
16 long as the government can prove the defendant conspired with
17 one or more of the other conspirators.

18 You are instructed that your verdict must be
19 unanimous. For you to find the defendant guilty of any of the
20 counts charged in the indictment, you must unanimously find
21 beyond a reasonable doubt from the evidence each element of
22 the crime charged in that count. If you do not so find, you
23 must find the defendant not guilty on that count.

24 Count 1. Title 18, United States Code, Section
25 1201(c), makes it a crime for anyone to conspire with somebody

1 else to kidnap another person and then transport that person
2 in interstate commerce.

3 For you to find the defendant guilty of this crime, as
4 charged in Count 1 of the indictment, you must be convinced
5 that the government has proved each of the following beyond a
6 reasonable doubt:

7 First, that two or more persons knowingly and
8 willfully made an agreement to unlawfully seize, confine,
9 inveigle, decoy, kidnap, abduct, or carry away and hold for
10 ransom, reward or some benefit, including financial gain, one
11 or more of the individuals named in the indictment;

12 Second, that the defendant knew the unlawful purpose
13 of the agreement and joined in it willfully, that is, with
14 intent to further the unlawful purpose; and

15 Third, that one of the conspirators during the
16 existence of the conspiracy knowingly committed at least one
17 of the overt acts described in the indictment, in order to
18 accomplish some object or purpose of the conspiracy.

19 In order for the defendant to be found guilty of
20 kidnapping, the government must prove each of the following
21 beyond a reasonable doubt:

22 First, that the defendant knowingly acting contrary to
23 law, seized, confined, inveigled, decoyed, kidnapped, abducted
24 or carried away and held another person, as charged;

25 Second, that the defendant held such person for

1 ransom, reward or some benefit, including financial gain, that
2 the defendant intended to derive from the kidnapping; and

3 Third, that the defendant intentionally transported
4 such person or caused such person to be transported in
5 interstate commerce while so kidnapped, confined, and
6 inveigled.

7 To kidnap a person means to unlawfully hold, keep,
8 detain, and confine the person against that person's will.
9 Involuntariness or coercion in connection with a victim's
10 detention is an essential part of the offense.

11 To inveigle a person means to lure, or entice, or lead
12 the person astray by false representations or promises, or
13 other deceitful means.

14 To decoy means to entice or lure by means of some
15 fraud, trick, or temptation.

16 The term ransom, reward, or some benefit includes
17 motives of personal monetary gain as well as motives which do
18 not involve financial gain, such a benefit -- since a benefit
19 is any legal or illegal object of the kidnapping which the
20 perpetrator might consider of sufficient motive to induce him
21 to undertake it.

22 The government need not prove the defendant knew that
23 he was crossing a state line with the victim. So long as the
24 defendant crossed the state line while intentionally
25 transporting the victim, or caused the victim to be

1 transported in interstate commerce, the third element has been
2 satisfied.

3 Count 2. Title 18, United States Code, Section 1951,
4 makes it a crime for anyone to conspire with someone else to
5 commit robbery or extortion, and in doing so, to interfere
6 with or affect commerce.

7 Robbery means the unlawful taking or obtaining of
8 personal property from the person of another, against his
9 will, by means of actual or threatened force, or violence, or
10 fear of injury, immediate or future, to his person or
11 property, or property in his custody or possession, or the
12 person or property of a relative or member of the family or of
13 anyone in his company at the time of the taking or obtaining.

14 Extortion means the obtaining of or attempting to
15 obtain property from another, with that person's consent,
16 induced by wrongful use of actual or threatened force,
17 violence, or fear.

18 For you to find the defendant guilty of this crime, as
19 charged in Count 2 of the indictment, you must be convinced
20 that the government has proved each of the following beyond a
21 reasonable doubt:

22 First, that two or more persons knowingly and
23 willfully made an agreement to commit robbery or extortion
24 affecting commerce, as charged in the indictment;

25 Second, that the defendant knew the unlawful purpose

1 of the agreement and joined in it willfully, that is, with
2 intent to further the unlawful purpose; and

3 Third, that one of the conspirators during the
4 existence of the conspiracy knowingly committed at least one
5 of the overt acts described in the indictment, in order to
6 accomplish some object or purpose of the conspiracy.

7 In order for the defendant to be found guilty of
8 robbery or extortion affecting commerce, the government must
9 prove each of the following beyond a reasonable doubt:

10 First, that the defendant wrongfully took or obtained
11 personal property from another, as charged;

12 Second, that the defendant knowingly and willfully
13 took the property from such person by means of robbery or
14 extortion; and

15 Third, that the defendant's conduct interfered with
16 and -- or affected commerce, or the movement or articles or
17 commodities in interstate or foreign commerce. The government
18 is not required to prove that the defendant knew his conduct
19 would interfere with or affect interstate commerce. It is not
20 necessary for the government to show that the defendant
21 actually intended or anticipated an effect on interstate
22 commerce by his actions or that commerce was actually
23 affected. All that is necessary is that the natural and
24 probable consequences of the acts the defendant took would be
25 to affect interstate commerce. If you decide that there would

1 be any affect at all on interstate commerce, then that is
2 enough to satisfy this element. The effect can be minimal.

3 The term property includes money and other tangible
4 and intangible things of value.

5 The term fear includes fear of economic loss or
6 damage, as well as fear of physical harm. It is not necessary
7 that the government prove that the fear was a consequence of a
8 direct threat; it is sufficient for the government to show the
9 victim's fear was reasonable under the circumstances.

10 The actual -- the use of actual or threatened force is
11 wrongful if its purpose is to cause the victim to give
12 property to somebody who has no legitimate claim to the
13 property.

14 Count 3. Title 18, United States Code, Section
15 1952(a)(2), makes it a crime for anyone to travel in
16 interstate commerce, or to use any facility in interstate
17 commerce, with the intent to commit any crime of violence to
18 further any unlawful activity.

19 For you to find the defendant guilty of this crime, as
20 charged in Count 3 of the indictment, you must be convinced
21 the government has proved each of the following beyond a
22 reasonable doubt:

23 First, that the defendant knowingly traveled in
24 interstate commerce or used any facility in interstate
25 commerce as alleged;

1 Second, that the defendant engaged in the interstate
2 travel or the use of interstate facility with intent to commit
3 a crime of violence; and

4 Third, that the defendant thereafter knowingly and
5 willfully committed a criminal of violence in further -- to
6 further an unlawful activity.

7 The term, quote, facility in interstate commerce, end
8 quote, includes means of transportation and communication.

9 The term, quote, crime of violence, end quote,
10 includes the offenses of kidnapping and robbery, both of which
11 have been defined for you in these instructions.

12 The term unlawful activity includes the offense of
13 extortion which has been defined for you in these
14 instructions.

15 You are instructed that a conspirator is responsible
16 for offenses committed by another conspirator if the
17 conspirator was a member of the conspiracy when the offense
18 was committed in furtherance of, or as a foreseeable
19 consequence of, the conspiracy. Therefore, if you find the
20 defendant guilty of the conspiracy charged in Count 1 and/or
21 Count 2, and if you find beyond a reasonable doubt that during
22 the time the defendant was a member of the conspiracy, another
23 conspirator committed any one or more of the elements of the
24 offense charged in Count 3 in furtherance of or as a
25 foreseeable consequence of that conspiracy, then you may find

1 the defendant guilty of Count 3, even though the defendant may
2 not have participated in any or all of the acts committed by
3 another conspirator which constitute the offense described in
4 Count 3.

5 If you find the defendant guilty of Count 3 and not
6 otherwise, then answer the following question: Quote, do you
7 find beyond a reasonable doubt that the offense charged in
8 Count 3 resulted in the death of another person? In answering
9 this question, you are instructed you must agree unanimously
10 as to which individual or individuals were killed, if any.
11 Therefore, if you find that a specific individual or
12 individuals died as a result of the offense, you will answer
13 yes, and thereafter, specify which person or persons you have
14 found died as a result of the offense. If you find the
15 defendant not guilty on Count 3 or if you fail to unanimously
16 find a specific person or persons died as a result of the
17 offense, then you will answer no. Proceed to Count 4.

18 Count 4. Title 18, United States Code, Section
19 1956(h) and 1957, make it a crime for anyone to conspire with
20 someone else to engage in a monetary transaction in property
21 derived of a specified unlawful activity with a value in
22 excess of \$10,000.

23 For you to find the defendant guilty of this crime, as
24 charged in Count 4 of the indictment, you must be convinced
25 that the government has proved each of the following beyond a

1 reasonable doubt:

2 First, that two or more persons knowingly or willfully
3 made an agreement to engage in a monetary transaction in
4 criminally derived property affecting interstate commerce, as
5 charged in the indictment;

6 Second, that the defendant knew the unlawful purpose
7 of the agreement and joined in it willfully, that is, with the
8 intent to further the unlawful purpose;

9 And third, that one of the conspirators during the
10 existence of the conspiracy knowingly committed at least one
11 of the overt acts described in the indictment, in order to
12 accomplish some object or purpose of the conspiracy.

13 In order for the defendant to be found guilty of
14 engaging in a monetary transaction in criminally derived
15 property, the government must prove each of the following
16 beyond a reasonable doubt:

17 First, that the defendant knowingly engaged in a
18 monetary transaction in criminally derived property affecting
19 interstate commerce, as charged;

20 Second, that the property involved in the monetary
21 transaction was valued at more than \$10,000;

22 Third, that the property was derived from the proceeds
23 of a specified unlawful activity, that is, the defendant
24 conspired to knowingly and willfully cause Jon Garth Murray to
25 travel in interstate commerce for the purpose of facilitating

1 the transfer of approximately \$600,000 by, through or to a
2 financial institution;

3 And fourth, that the defendant knew the property was
4 derived from the proceeds of the unlawful activity of
5 kidnapping, robbery and/or extortion.

6 The term monetary transaction means the deposit,
7 withdrawal, transfer or exchange, in or affecting interstate
8 commerce, of funds or a monetary instrument by, through, or to
9 a financial institution.

10 The term monetary instrument includes coins or
11 currency of the United States or of any other country,
12 traveler's checks, personal checks, bank checks, or money
13 orders.

14 The term financial institution includes an insured
15 bank, a commercial bank or trust company, a private banker, a
16 currency exchange, an operator of a credit card system, an
17 insurance company, a dealer in precious metals, stones, or
18 jewels, a pawnbroker, a travel agent, a licensed sender of
19 money, a telegraph company, or a business engaged in vehicle
20 sales.

21 The term property includes money and other tangible or
22 intangible things of value.

23 The term criminally derived property means any
24 property constituting, or derived from, the proceeds from a
25 criminal offense.

1 The term proceeds includes money, funds, monetary
2 instruments, or other property, whether real or personal.

3 The term specified unlawful activity means the crimes
4 of kidnapping, robbery and extortion, which are defined for
5 you in these instructions.

6 The government must prove only that the defendant knew
7 the property involved in the monetary transaction constituted,
8 or was derived from, directly or indirectly, proceeds obtained
9 from some criminal offense, but the defendant need not have
10 known the precise nature of the offense from which the funds
11 were derived.

12 It is not necessary for the government to show the
13 defendant actually intended or anticipated an effect on
14 interstate commerce by his actions or that commerce was
15 actually affected. All that is necessary is that the natural
16 and probable consequences of the acts the defendant took would
17 be to affect interstate commerce. If you decide that there
18 would be any effect at all on interstate commerce, then that
19 is enough to satisfy this element. And the effect can be
20 minimum.

21 Count 5. Title 18, United States Code, Section 2314,
22 makes it a crime for anyone to transport in interstate
23 commerce stolen property having a value of \$5,000 or more, and
24 knowing it to have been stolen, converted, or taken by fraud.

25 For you to find the defendant guilty of this crime, as

1 charged in Count 5, you must be convinced that the government
2 has proved the following beyond a reasonable doubt:

3 First, that the defendant transported in interstate
4 commerce items of stolen property as described in the
5 indictment;

6 Second, that at the time of such transportation, the
7 defendant knew the property had been stolen, converted or
8 taken by fraud;

9 And third, that the items had a value of \$5,000 or
10 more.

11 The term stolen includes all wrongful and dishonest
12 takings of property with the intent to deprive the owner of
13 the rights and benefits of ownership, temporarily or
14 permanently.

15 The term value means the face, par, or market value,
16 whichever is the greatest.

17 Any verdict must represent the considered judgment of
18 each juror. In order to return a verdict, it is necessary
19 that each juror agree thereto. In other words, your verdict
20 must be unanimous.

21 It is your duty as jurors to consult with one another
22 and to deliberate in an effort to reach agreement, if you can
23 do so without violence to your individual judgment. Each of
24 you must decide the case for yourself, but only after an
25 impartial consideration of the evidence in the case with your

1 fellow jurors. In the course of your deliberations, you may
2 choose to re-examine your own views and even change your mind
3 completely after discussing the evidence with the other
4 jurors. However, do not surrender your honest conviction as
5 to the weight or the effect of the evidence solely because of
6 the opinion of your fellow jurors, or for the mere purpose of
7 returning a verdict.

8 Remember at all times, you are not partisans. You are
9 judges, judges of the facts. And your sole interest is to
10 seek the truth from the evidence in the case.

11 Upon retiring to the jury room, you should first
12 select one of your number to act as your presiding juror who
13 will preside over your deliberations and will be your
14 spokesperson here in court.

15 A verdict form has been prepared for your convenience.
16 You will take the verdict form to the jury room, and when you
17 have reached a unanimous agreement as to your verdict, you
18 will have the presiding juror fill it in, date it, and sign
19 it, and return to the courtroom.

20 If, during your deliberations, you should desire to
21 communicate with the Court, please reduce your message or
22 question to writing signed by the presiding juror and pass the
23 note to the Court Security Officer, who will bring it to my
24 attention. I will either answer your question in writing or
25 bring you back to the courtroom for other verbal instructions.

1 If you send a written message or question to the Court,
2 however, do not volunteer any information as how the jury is
3 divided for a conviction or acquittal in any particular time.

4 Members of the jury, I never invite a question.
5 Sometimes the jurors have a question. The procedure will be
6 for me to stop whatever I'm doing. I will have the parties
7 back in the courtroom. I will share with them that note.
8 They have the right to suggest how I answer the note, and
9 then, I generally will answer it and send it back in the
10 courtroom -- of the deliberating room.

11 The point is it takes time. Never stop deliberating.
12 Many a jury has come in with a verdict and the question falls
13 to be meaningless before a question gets answered. Always
14 continue to deliberate.

15 One last instruction and that is I think you can tell
16 from this, you will have the legal instructions I have just
17 read to you. You will have the verdict which you are to fill
18 in when you have decided it, which is a two-page instrument
19 that the lawyers may comment on.

20 You will have a copy of the indictment that makes the
21 specific charge, and you will have all of the evidence that
22 has been admitted into evidence to deliberate on. You will
23 have all of those things, along with your memory, as to what
24 the evidence was, and that will be what you determine and base
25 the verdict on.

1 What the lawyers are going to say in a minute can be
2 very important. Listen to them. It might kindle your
3 thinking process as to what the evidence may mean or not mean.
4 But what they say is not evidence and is not binding on you.

5 Mr. Mills.

6 GOVERNMENT'S CLOSING STATEMENTS

7 MR. D. MILLS: Good morning, members of the jury.
8 What we're about to do and what you're going to do is very
9 serious business that we're undertaking here. And I know as
10 you sat through the two weeks and I watched you take notes --
11 and I know you've taken your job seriously, and all of the
12 parties to this lawsuit appreciate that.

13 Like I said, the Judge said you'll have your
14 instructions. One of the important things that are in those
15 instructions -- I think both defense counsel said it to you, I
16 say it to you now -- is use your common experiences and your
17 common sense if that's what you call it. You have the
18 evidence which consists of the documents that are here, the
19 testimony of the witnesses with which to decide your verdict,
20 and your common experiences.

21 You don't set that aside when you come in here. Use
22 it. And I suggest it will be very helpful to you in analyzing
23 facts and things that occurred as to what you decide in your
24 ultimate verdict.

25 As the Judge said, the lawyers' recollection of

1 evidence may differ from yours, and what we wrote down and
2 what you wrote down may not be the same. But I ask you to
3 remember in the opening statement of defense counsel as one
4 thing I want you to consider. Defense counsel said what this
5 case is about was the collision of two strong-willed persons,
6 Madalyn Murray O'Hair and David Waters.

7 Defense counsel said in his opening statement to you,
8 it's logical that David Waters would be angry with Madalyn
9 Murray O'Hair after she wrote the news article about him in
10 the Atheist Newsletter. And you have that and you can go and
11 read it. But then, defense counsel suggests in his opening
12 statement to you that Waters, after he's been turned in by Ms.
13 O'Hair and prosecuted by the District Attorney's Office for
14 embezzling money, goes to her to help her flee the country.

15 Ask yourself if that's logical. In your common
16 experience, would you do that? Would you go to someone that
17 just embezzled from you and ask them to help you flee the
18 country? Think about what he suggested to you in doing that.

19 You heard testimony about what Ms. O'Hair did. She
20 attempted to get a restraining order. She built a fence.
21 Does that make sense to you that David Waters is going to help
22 Ms. O'Hair flee the country? You decide that and that will
23 help you decide a whole lot of this case.

24 Defense counsel suggested to you that Mr. Karr, the
25 defendant here, was motivated by Mr. Waters lying to him and

1 by fear. And you heard that Mr. Karr and his statement to the
2 IRS agent and his statement to Mr. Miller, his friends that he
3 worked for in Florida, that he was going to Texas to be a
4 bodyguard for the O'Hairs.

5 Now, ask yourself, why does Mr. Waters have to
6 motivate this individual through fear and lying if they're
7 going to be a bodyguard? Ask yourself another question: You
8 heard testimony from several witnesses that the fee was going
9 to be about \$30,000 for each of these individuals for their
10 efforts in bodyguarding these individuals.

11 Depending on how long you think the conspiracy went
12 on, if you believe there was one, they were given a thousand
13 dollars a day, if you just look at 30 days in September, maybe
14 a little less if you consider some of their activity in
15 October. Is that reasonable? Is that what bodyguards get
16 paid? I suggest not to you, but you decide that from the
17 evidence.

18 Mr. Mills in his opening statement said the simplest
19 explanation is that the O'Hairs left the country to flee the
20 Internal Revenue Service. Do any of you believe that? That
21 will be a controlling issue for you.

22 You heard Mr. Etter, the tax attorney, come and
23 testify that Mrs. O'Hair didn't fear the IRS, she thrived on
24 fighting with the IRS. William Murray, her son, said she
25 thrived on fighting. She was -- used it as a method to raise

1 money.

2 Do you really believe that the 75-year-old woman fled
3 the Internal Revenue Service? You remember what Mr. Etter
4 said, that she sent back the two-word letter to the Internal
5 Revenue Service with the expletive in it. Does that sound
6 like someone who would flee the country to get away from the
7 IRS?

8 And you heard what Mr. Etter said and there's evidence
9 in the record here, the documents that show how minimal the
10 amount of assessment the Internal Revenue actually collected
11 from her. I suggest the simple notion of a flee is just a
12 rabbit trail that they're trying to lead you down to get your
13 attention away from the real evidence of what happened, the
14 killing of the O'Hairs by this man over here and others.

15 Is it logical? Use your common sense, that if a
16 70-year-old woman left -- and I'm directing this statement to
17 you because of the person affiliated with the Baptist Church
18 -- would you flee to Romania, if you were going, when you were
19 old and you were sick? Would you leave this country when you
20 needed medical care and go to Romania? Is that something you
21 would do?

22 And you've heard evidence about how close Ms. O'Hair
23 was to her son and to her granddaughter -- adopted daughter.
24 They weren't present. The recollection of other people is
25 they pretty much were all together. I'm not here to suggest

1 to you that the man came from the church and he lied up here.
2 I suggest to you that his recollection is not real good of
3 what he saw.

4 And you could recall how far away from you were you,
5 he says about here. When defense counsel stood right here, if
6 you remember this, with photographs of Ms. O'Hair, he says,
7 well, "I can't see them. Bring them up here." And remember,
8 I asked him, too, was the light better in here than in there?
9 And he said yes.

10 And I suggest that you probably had a similar
11 experience in your life as he did. You've probably seen
12 people someplace walking along and you think, God, I think I
13 know that person over there. But you don't have enough belief
14 in that to walk up and say, aren't you so and so?

15 Here's a man who studied atheism. He says he knows
16 she's missing, he doesn't mind intruding upon her privacy
17 because he told you he was going to go get his camera and come
18 back the next evening and take the picture, but all he had to
19 do is say, "I'm so and so. Aren't you Madalyn Murray O'Hair?"
20 Real simple thing.

21 But I suggest his reservation says to you he wasn't
22 sure who he saw. He thought he saw someone that looked like
23 that lady, but he didn't see her. There wasn't anyone there
24 -- there. Remember, she had no cane, no walker.

25 Mr. Mills said in his opening statement, in your

1 recollection, talked about hands and feet sticking out, and he
2 says that's inconsistent with barrels being used. If as he
3 said in his opening statement that the O'Hairs fled the
4 country to avoid the Internal Revenue Service, why is he
5 concerned whether their hands and feet in the barrels were
6 sticking out? That makes no sense.

7 If they fled, you have no concern with whether they're
8 deceased. These inconsistent defenses that are being
9 presented, is that done to assist you in determining what
10 happened or is that done to confuse you? And I say you
11 consider that when you deliberate, too. Use your common sense
12 about that.

13 As the Judge said, you'll get to take the jury charge
14 back with you. Page 2 has the word reasonable doubt. It has
15 some nice lawyer talk in there about not -- proof of such
16 convincing character that you would be willing to rely and act
17 upon it without hesitation in the most important affairs of
18 your life.

19 You have a lot of important affairs just like the rest
20 of us do. I suggest that in all your dealings, you hesitate
21 before you act because you reason things out. And I'll give
22 you some suggestions as to when you do that. When you change
23 jobs, you generally have some reservation in your gut about,
24 am I making the right decision here to go change jobs?

25 Those of you who have gotten married, you probably had

1 a hesitation before you got married. If you move your
2 children to a different school, if you buy a new house, you
3 always know you have little hesitations before you go do those
4 things, and your hesitations are caused because you reasoned,
5 you thought this through, and then, you act.

6 And I suggest that beyond a reasonable doubt is
7 nothing more than those type of occasions that you've had.
8 You thought things through, you've analyzed it, and you made a
9 decision that you think is appropriate based upon all you
10 know. And that's what reasonable doubt is and nothing more
11 than that.

12 On page 3, you will see, it said, use your common
13 sense, which we've discussed. On page 4, it gives you some
14 information about credibility and believability of the
15 witness. And I suggest you look at those in there because
16 they tell you about the witnesses. Do you believe them to be
17 honest? Did they impress you as honest? Did they have any
18 particular reason not to tell the truth? Did they have a
19 personal interest in the litigation? Do they have a
20 relationship with either side in this lawsuit? Did they seem
21 to have a good memory?

22 All those are things that you should use in coming to
23 conclusion about who you believe in this particular case. On
24 page 7, there's another important instruction that I suggest
25 you remember. Lawyers call it the law of parties. And what

1 it says, the law recognizes that ordinarily, anything a person
2 can do for himself may also be accomplished by that person
3 through the direction of another person as his or her agent,
4 or by acting in concert or under the direction of that person.

5 Defense counsel says Mr. Waters manipulated Mr. Karr
6 through lying and deception. Mr. Karr is acting as a party in
7 that case. Anything that one person can do could be done
8 through the actions of another. And don't forget that
9 particular instruction on page 7. I suggest you read it and
10 keep it in mind, because parties do act for the benefit of
11 each other.

12 Page 8, it talks about a conspiracy, and it says a
13 conspiracy is an agreement between two or more persons. It
14 doesn't have to be reduced to writing, which it generally
15 never is. You infer from other people are they acting in
16 concert with each other? Do their acts seem to go towards
17 furthering whatever activity is that they've undertaken?

18 And that is important and it relates to several
19 counts. It relates to Counts 1, 2 and 4 of this indictment.
20 There are three different conspiracies set out in this
21 indictment. It also says that if a defendant understands the
22 unlawful nature of a plan or scheme and knowingly and
23 intentionally joins in that plan or scheme on one occasion,
24 that is sufficient to convict him for conspiracy even though
25 the defendant had not participated before, and even though the

1 defendant played only a minor part.

2 This defendant flew to New Jersey as he told -- as Mr.
3 Miller said. He told Mr. Miller he flew, and he said one
4 thing he regretted was using his own name. Ask yourself if
5 you believe Mr. Miller, why does this defendant lie to Mr.
6 Miller about using his own name? You've heard that the ticket
7 was used Conrad Johnson.

8 Why use an assumed name? Is he further in the
9 conspiracy? Did they get \$600,000 from going to New Jersey?
10 That's for you to decide. Did this man go to Bob Fry's house
11 to retrieve this confidential letter? That's for you to
12 decide. But if he did and you believe that was in furtherance
13 of the conspiracy, even though he's playing a minor role, he
14 is guilty of all the acts of the conspiracy.

15 And there is another instruction on page 14 that is
16 called a Pinkerton charge, what the lawyers call it. And I'll
17 come to it a little bit or discuss it, or I'll do it right
18 now, I guess. If you join a conspiracy and you decide that
19 this man is in a conspiracy with Mr. Waters, Mr. Fry, with Mr.
20 Osborne, if you believe, he has to perform only some minor
21 role and he is responsible under the law for everything that
22 the conspirators did that was reasonably foreseeable in that
23 conspiracy.

24 The death of the O'Hairs, the death of Mr. Fry, if
25 those are reasonably foreseeable things and you find him in

1 that conspiracy, he doesn't have to be the one to actually do
2 the killing. Did he do something in furtherance? And I
3 suggest there's plenty of evidence that he did that because
4 you know he went to New Jersey with Jon Garth Murray, you know
5 he went to Mr. Fry's house to retrieve the confidential
6 letter, and ask yourself why did he do that.

7 Count 1 talks about conspiring to kidnap another
8 person and then, transport in interstate commerce. The trip
9 to New Jersey with Mr. Murray is what that is about. It says
10 to kidnap means to uphold, keep, detain and confine the person
11 against the person's will. Remember what the detective at the
12 gold exchange said about Mr. Murray, how his clothes were
13 unkept, how he smelled.

14 Do you think Mr. Murray was being kept against his
15 will? I suggest that some evidence that tells you he is.
16 Count 2, robbery and extortion by actual or threatened force
17 or violence. Read the words. Read the definition. Read
18 extortion. It says means, the obtaining of or attempting to
19 obtain property from another with that person's consent,
20 induced by wrongful use or actual threatened force.

21 That's what happened. Went to New Jersey, he was
22 holding his mother and his sister. That's how the money got
23 removed. It's real simple. Count 3 is a critical count.
24 Traveled in interstate commerce with the intent to commit any
25 crime of violence or to further unlawful activity.

1 Traveled in interstate commerce or used any facility
2 in interstate commerce. You know they flew on an airplane to
3 New Jersey. That's clearly interstate commerce. Or used any
4 facility in interstate commerce. Using the telephones to make
5 phone calls is sufficient. The wire transfer from the bank in
6 New Jersey to the jeweler's account in San Antonio is using
7 the facility in interstate commerce. Don't get hung up on
8 those particular terms.

9 Crime of violence as a definition say includes
10 kidnapping and robbery. You get some special instructions on
11 the bottom of 4. And the verdict form also has it if you find
12 this person guilty of that particular count, then do you find
13 beyond a reasonable doubt that the offense resulted in the
14 death of another?

15 The three O'Hairs or Mr. Fry. If you find that this
16 conspiracy resulted in the death of those three individuals,
17 then you answer that special question as to that particular
18 issue. And I suggest you know the answer to that question.

19 Count 4 is money laundering. This involves the
20 \$600,000, too. The transfer of the money from New Jersey back
21 to Texas. You can read the instruction, and it also has
22 foreign commerce because the money came from New Zealand to
23 the bank in New Jersey. You can read definitions there, too,
24 about monetary transaction means deposit, withdrawal or
25 transfer. It also says a monetary instrument is a bank check

1 which is a wire transfer.

2 Count 5 talks about traveling in interstate commerce
3 with stolen property having a value of \$5,000 or more. The
4 evidence that relates to that, members of the jury, involves
5 the watches, the Rolex watches that Mr. Karr wanted to give to
6 Charlene Karr. It also includes that diamond that he sold to
7 his friend in Chicago for about \$3400. There's a check in
8 evidence showing that.

9 You heard the jeweler testify that the one watch was
10 worth more than \$5,000, the man's Rolex watch. That's what
11 that count is about. Back to is the evidence logical as to
12 various theories that have been put up here? I'll come back
13 again and say, is it logical for a 75-year-old woman to leave
14 the country?

15 I suggest in your common sense, you know that no one
16 70 years old, that's in poor health, is going to Romania.
17 That just does not make sense. You may differ if you think it
18 does. I suggest logic tells you otherwise. Is it logical to
19 ask the angry David Waters to help you flee the country? The
20 individual that just embezzled from you?

21 Is it logical to flee the country after the gold was
22 stolen? What assets did they have to take with them? There
23 was another \$100,000 of gold ready for them on Monday, which I
24 believe was the 2nd of October, if I could keep my dates
25 straight. They had other assets they could have converted

1 into gold. Why didn't they do that? Why, if you were fleeing
2 the country, would you leave after the gold was stolen?

3 Maybe you believe the three individuals that came and
4 testified that the gold was stolen that they stole it to split
5 it up with the defense -- or with the defendants. I suggest
6 to you the answer of the one individual that testified when
7 defense counsel asked him, do you have any invoices and he
8 said, "No, you can go over and ask all the people at the bar,
9 they all know who I am." One tells you the answer to that
10 deal. There was no conspiracy by those three. They took the
11 money.

12 And once the money was gone, why would the O'Hairs
13 leave if that was part of the plan to get assets to get out of
14 the country? Is it logical to flee? You heard Ms. Murray's
15 son come and testify that Mrs. Murray made a good living out
16 of what she did, raising money, getting in arguments with
17 people, filing lawsuits.

18 She managed to generate large sums of money. She
19 said, I believe, and you may recall differently, millions of
20 dollars a year. If someone has been living off of millions of
21 dollars a year or a million dollars a year, is it logical to
22 believe that they're going to flee the country with \$500,000?
23 And once you fled, there's no more ways to raise money. No
24 more fund-raising.

25 You're going to live off of \$500,000 for the rest of

1 your life, the three of them. I suggest that the logic to the
2 answer to that question tells you that they were killed. What
3 evidence of death do we have? We have the confession of this
4 defendant. It's in writing. It's in evidence given to this
5 man.

6 He drew a map as to how to get to this location to
7 this hunting preserve. You have the taped conversation of
8 this defendant with his ex-wife, neither of which knew was
9 being recorded. He may have known because of where he was in
10 the facility in prison that he was being recorded. Listen to
11 the tape, it's in evidence. You could have the tape recorder.

12 He talks about going to look at the area with Waters.
13 How Waters got out of the car. He stayed in the car. He
14 talks about something being uncovered or the floods uncovered
15 something, I think is the way he says it in there. He also
16 said, "Well, when it's over, it's over."

17 Ask yourself what he's talking about. He's caught.
18 When it's over, it's over is what I suggest he means to you.
19 He says the area where the -- where it is buried is out in the
20 middle of nowhere, a hunting preserve. You say where are the
21 bodies? Defense counsel says where are the bodies?

22 You heard the Texas Ranger and you heard the rancher,
23 they gave you an explanation. Hogs will eat them, coyotes
24 will carry off the bones, floods have come through the area
25 and washed the bodies away. They'll never be found is what I

1 suggest the evidence tells you.

2 You don't have to agree with that. That's your
3 decision. That's what you get to do sitting in that box over
4 there. What about Art Miller, this defendant's friend? He
5 tells you that at one point in time, Mr. Karr was giving him
6 all kinds of different stories. And then, he says I want you
7 to go back with me to Texas. I want to take the gun along
8 with me, but there's something going on. Mr. Waters has said
9 that the floods or the rains have uncovered parts of the
10 bodies.

11 Maybe you remember Mr. Miller testifying that, maybe
12 you don't. It's Mr. Miller. That's not the government's
13 friend. That's his friend that came in here and testified to
14 that. And I don't think there's any reason for you to doubt
15 what he said. What about Patti Jo Steffens? Looked into a
16 knapsack or a gym bag, if you call it, saw a turquoise-colored
17 towel her dad had given her, three pairs of bloody tennis
18 shoes.

19 She also saw Mr. Waters with Danny Fry's T-shirt
20 that's in evidence, polishing his shoes, and one portion of it
21 had blood on it. What does that evidence tell you about what
22 occurred? What about Danny Fry? You heard testimony from
23 Lisa Jones and the telephone records that are in evidence how
24 his behavior changed during the month of September.

25 Short telephone calls instead of long telephone calls.

1 Didn't have time to get back and go to his daughter's 16th
2 birthday, who he loved very, very dearly. Then, he writes a
3 letter to Lisa Jones, confidential, do not open, give to my
4 brother, Bob. Brother comes in. You saw him testify. He
5 said he became concerned.

6 Ask yourself if the O'Hairs have fled the country to
7 avoid the IRS. Why does this defendant and Mr. Waters make a
8 trip to Florida? And remember how Mr. Waters, according to
9 Mr. Fry's testimony, tricked him. Bob Fry calls first. Do
10 you know where my brother is? No. He left with some people.
11 He was drunk. That was a Thursday, if that's what your
12 recollection -- that's my recollection of when that phone call
13 occurred.

14 Saturday morning, he calls again and asks, "Have you
15 heard any more from my brother?" And this time, he tells
16 Waters that I have this letter. It's -- it says, marked
17 confidential. Waters calls him back on Sunday morning, one
18 day later, he was in Austin when he called on Saturday.

19 Sunday morning, Waters calls back and says, "Hey, I
20 found some stuff here. There's a letter, looks like to you,
21 the name Bob. You're the only Bob that I have on it. Only
22 Bob that I know," excuse me. "Give me your address." He gave
23 him his address, and by sundown that night, this defendant and
24 Mr. Waters were in Mr. Fry's house, threatening him, telling
25 him, "Oh, there was a big score in Texas. You better destroy

1 that letter. The people involved in this are worse than the
2 Mafia" .

3 If the O'Hairs fled the country, why are they going to
4 retrieve this letter? What are they concerned about? And
5 remember what Mr. Fry said about Mr. Waters talking about
6 Danny Fry, saying Danny Fry drank too much and he had a big
7 mouth.

8 If you were involved in a crime of the magnitude that
9 these people were involved in, would it be in your best
10 interest to silence one of your coconspirators by killing
11 them? I think you think that you know the answer to that
12 question, also. That's all.

13 THE COURT: Ms. Williams.

14 MS. WILLIAMS: May it please the Court.

15 THE COURT: Yes, ma'am.

16 DEFENDANT'S CLOSING STATEMENTS

17 MS. WILLIAMS: It's interesting to me that at this
18 point in the case, Mr. Mills is standing up here and talking
19 to you about how the defense theory doesn't make any sense.
20 And it may be tempting for you to say to yourselves, why
21 didn't the defense answer the questions that I'm about to talk
22 about?

23 Remember, don't forget that the burden of proof stays
24 over here. It is absolutely their responsibility to prove
25 every allegation they made to you beyond any reasonable doubt.

1 It doesn't come over here. Mr. Mills and I, on behalf of Gary
2 Karr, don't have any burden.

3 So ask yourself: Why at this point in the case is Dan
4 Mills standing up in front of you, talking about how their
5 theory makes more sense than our theory? Why are there more
6 questions than answers? I want to talk about money. Why did
7 Ed Martin spend so much time, so many years investigating this
8 case and know so little about the O'Hairs' finances?

9 What happened to that money -- remember my questions
10 to Agent Martin? What happened to that money that the
11 donations in 1994 went down to \$11,000? What happened to the
12 difference? What bank account did that go in? How long could
13 the O'Hairs live on the amount of money, whatever it is, that
14 they took from the Atheist Organization?

15 How many witnesses did you hear from? How much
16 evidence did you hear about the O'Hairs taking money from
17 Atheist Organizations to use for their own personal lives?
18 Think about Denise Cushman. Remember her testifying about how
19 many times she had been asked to lie about shredding financial
20 documents, about faxes that she wasn't supposed to see? That
21 remember those faxes between Don Sanders and Jon Murray? And
22 those are in evidence if you want to look at them.

23 Facts about selling grandfather clocks, about selling
24 off art collections, about selling Madalyn Murray O'Hair's
25 Mercedes. Talking at that point about selling John's

1 Mercedes, about selling Robin's Porsche. Where did that money
2 go? There is no telling how much money the O'Hairs had put
3 away that these folks just didn't find.

4 What happened to the \$100,000 bequest that Don Sanders
5 gave to the Atheist Organization? Where did it go? I want to
6 talk briefly about these coins. I asked Agent Martin about
7 this number that he grabbed out of the air. This \$440,000.
8 Remember Officer Gary Albrecht? Remember the testimony that
9 he gave about how there were these two briefcases of coins and
10 they were on this metal luggage cart?

11 I submit to you that it's just as logical that they
12 split that money in two, \$250,000 went to the O'Hairs and
13 \$250,000 went to David Waters, Danny Fry and Gary Karr for
14 their services to the O'Hairs in helping them get out of the
15 country.

16 If that \$250,000 -- the money that went to David
17 Waters and Danny Fry and Gary Karr, if that \$250,000 is the
18 money that those boys stole out of that storage unit, you know
19 what? If you take -- if you do what I asked Agent Martin, did
20 you do this and he didn't, but if you take Government's
21 Exhibit 74-1, 75-1 and 76-1, you take those jewelry store
22 tickets and you add them all up, I submit to you it adds up to
23 \$175,000. You take \$175,000 and you add 75, you add Mr.
24 Cardenas' stash, his part of it that he took to Tennessee and
25 pawned -- they didn't go to Tennessee and get those records --

1 if you add those numbers up, it adds to \$250,000.

2 Did the government's theory add up that well? I don't
3 think so. And I'll talk to you briefly about science. Not
4 one time in this case did science support the government's
5 theory. Not one time. There's no blood on the knives.
6 There's no blood on the sheathe. There's no blood on the bow
7 saw. There's no bleach in that spray bottle. There's no
8 bleach in the storage unit.

9 You've got this mitochondrial DNA. Could be a great
10 tool. In this case, it doesn't tell you much. It tells you
11 whatever was in there was just as consistent with one out of
12 every four Caucasians you see walking around on the streets of
13 Austin as it is with anyone else.

14 Is it any wonder that by the end of this case, when
15 these folks see the report that says that they could submit
16 these knives and this bow saw to the Southwest Institute of
17 Forensic Sciences to find out whether or not, in fact, those
18 tools are consistent with the injuries to Danny Fry, is it any
19 wonder they didn't do that?

20 A couple of other questions. Where does Madalyn
21 O'Hair's prior flight to Mexico under an assumed name to flee
22 prosecution in Baltimore fit into the government's theory?
23 Where does fake IDs fit into the government's theory? What
24 about this Solheim guy that the Dallas Sheriff's Department
25 was so concerned about?

1 This guy who was living at David Waters' apartment
2 here in Austin and then, moved into the Warren Inn right after
3 David Waters left and then, came back and lived at David
4 Waters' apartment, and then, boy, when the police start
5 looking for him, he goes back to Sweden or Norway, whatever
6 country he's from? What about him? Where does he fit into
7 the government's theory?

8 I want to talk to you about a couple of key witnesses.
9 Jason Cross. Jason Cross talked to you about things he said
10 Gary Karr told him, and he said some very important things.
11 Some things, undoubtedly, you're going to hear about from Mr.
12 Carruth. I want to ask you this. Jason Cross said, I started
13 talking to Gary Karr in April. He began to trust me. He
14 began to tell me these things. I began to write them down.

15 I began to take these notes because I thought I could
16 help him. I wanted to make sure that when I talked to
17 somebody about it, I remember the details. I wanted to make
18 sure that I didn't leave anything out. I wanted to make sure
19 they believe me.

20 If you're going to believe Jason Cross, you have to
21 believe he was telling the truth when he told you those
22 things. You have to believe that he was telling you the truth
23 when he said he started talking to Gary in April and he
24 started taking these notes. And he did that because he wanted
25 to be believed.

1 Do you know what? The truth is that Jason Cross
2 talked to the FBI first. He talked to the FBI before he
3 started taking these notes. And he started taking these notes
4 with the huge expectation of getting something in return. You
5 want to know how I can stand up here and say that? Because if
6 you look at page 1 of Jason Cross' notes, Government Exhibit
7 97-1, page 1, No. 8, Gary said you have nothing on him.

8 Gary said you have nothing on him. If he's taking
9 these notes for his own identification, for his own memory,
10 why wouldn't he write Gary said the FBI, Gary said the police,
11 Gary said whoever Jason Cross is going to be talking to, and
12 he doesn't know who it is, yet, why would he write that?

13 Fact is he talked to the FBI first. He found out what
14 the FBI's theory was and he wrote down notes that he felt fit
15 their theory. He wrote down notes that he thought would meet
16 their expectations. He wanted something in return.

17 Patti Jo Steffens. Key witness for the government.
18 Clearly emotional. Clearly had everybody listening to her.
19 Clearly wanted you to believe. And up to this point, you
20 haven't really heard any reason other than she wants the FBI
21 to believe her because she's gotten this immunity. She only
22 gets the immunity if the government believes she's telling the
23 truth.

24 She wanted you to believe how afraid she was of David
25 Waters, how horrible she felt at the time that all these

1 things were happening. Government Exhibit W92-1, it's an
2 e-mail that you haven't heard about from Patti Jo
3 Steffens-Chavez, already married, to David Waters.

4 October the 19th, 1998, right before she started
5 talking to the FBI, right before she started making her deal,
6 listen to this e-mail and then, try to reconcile that with the
7 woman that you saw on the stand. "David, as much as I try
8 never to consider the facts of our relationship, the pain and
9 humiliation I usually felt at the concept you were using me
10 for your own comfort, I must say that even now, you continue
11 to take the advantage. I looked around your apartment, and I
12 see that you kept all the nice things we supposedly had
13 together, the table, the bed, the art work, all the kitchen
14 stuff that I bought, and the pans my mom bought, the
15 microwave."

16 "It's not just a matter of the possessions, it's a
17 matter of principle. I paid and paid and paid. Then, because
18 you're more vicious than me, you kept everything. You liked
19 to minimize the fact that I continued to pay for your
20 irresponsible use of my credit. I can see you're doing
21 perfectly well without me, even better than you have for
22 ages."

23 "You never loved me. You don't love me today. It's
24 insulting and painful and will scar me forever. Just don't
25 pretend that you ever cared about me."

1 I submit to you, ladies and gentlemen, that what you
2 saw up there on that witness stand is a woman getting revenge,
3 a woman scorned, a woman wanting David Waters to pay for what
4 he did to her, a woman more concerned about the microwave than
5 she ever was about David.

6 You know, it's great for the government to have a
7 theory when they're investigating the case. It's great for
8 them to have a theory when they stand up in front of you and
9 give their opening statement. It's wonderful for them to have
10 a theory of how they think the witnesses are going to -- what
11 the witnesses are going to say and how they're all going to
12 fit together.

13 But by the time Dan Mills and Jerry Carruth stand up,
14 here in front of you, in final argument, you have a right to
15 expect them to have way more than a theory. You have the
16 right to expect them to tell you absolutely, conclusively what
17 happened, and they haven't done that. They haven't met their
18 burden.

19 THE COURT: Mr. Mills, I'm going to give the jury a
20 break. Members of the jury, I'm going to give you a
21 ten-minute break. Stretch, use the facilities. During the
22 break, I also want you to order lunch. We have some menus for
23 you. We will send that lunch out so that you will have it.
24 Try to get it in ten minutes

25 (recess.)

1 THE COURT: You may proceed, Mr. Mills.

2 MR. T. MILLS: May it please the Court.

3 THE COURT: Sure.

4 MR. T. MILLS: Members of the jury that was in 1997.
5 That was in 1997 that the Internal Revenue Service
6 investigating the case decided that a 78-year-old woman could
7 be running. She had talked about running. She had spent her
8 life doing things with false passports and running. It was
9 her method of dealing with governmental pressures.

10 She went to visit the man who almost looked like a
11 hermit, Mr. Via, the humorous witness who won't cut his beard
12 until there's a woman in the White House. And during that
13 month before they left, it was discussed that Madalyn was
14 going to not stay as head of the Atheist Organizations
15 nationally. She had just about positioned herself from the
16 testimony of numerous people, including the bookkeepers at the
17 Atheist -- American Atheists Organization, positioned herself
18 financially with money that was never accounted for, not by
19 the IRS, not by the receiver, not by the bankruptcy court.
20 They never looked.

21 On October the 1st, 1995, the laws were going to
22 change to where you had to present photo ID when you left the
23 Continental United States. Actually, when you made any kind
24 of an airplane flight in commerce. It's consistent with the
25 facts that towards the end of August, the O'Hairs had begun

1 the process of moving money from New Zealand to the United
2 States.

3 And it's consistent with the facts that Madalyn, the
4 dominant figure that she was, informed the kids that they were
5 going to be leaving. Jon even went so far as to get the cars
6 fixed. Madalyn had one thing that David Waters couldn't
7 control, no matter how much anger David Waters may have had in
8 her.

9 She had the ability to control his probated sentence.
10 She had the ability to control the prosecutor's actions over
11 him. And it is not far-fetched to think that she would go to
12 a crook. Even her own son, William, testified she enjoyed
13 flaunting authority by hiring ex-convicts. Nothing unusual
14 about that.

15 But David Waters didn't have one thing that was needed
16 for the O'Hairs to make a getaway without leaving a credit
17 card trail. David Waters didn't have a credit card. Patti Jo
18 Steffens, whatever mentality she is, didn't produce a credit
19 card. Danny Fry didn't have a credit card. Chico Osborne,
20 whoever he is, in this case, an alleged coconspirator, no
21 evidence he had a credit card.

22 But Gary Paul Karr had credit. And so he came to
23 Texas. You know, the prosecution started out the case, and
24 they have consistently talked about the theme of the
25 prosecution being the revenge and greed of David Waters. And

1 from time to time, I've kind of reminded myself that we don't
2 represent David Waters. We represent this alleged underling,
3 Gary Karr.

4 Mr. Karr's theme and the defense theme of this case is
5 from the Boy Scout Handbook: You can't make a strong
6 structure with weak wood. The prosecution did not make the
7 facts. The prosecution inherited the facts from their agents.
8 The prosecution will not lose and the United States will not
9 lose if it is determined by a jury that there is reasonable
10 doubt as to what happened in this case.

11 The prosecution cannot be faulted and they are very
12 talented. If they have weak facts that they are expected to
13 make a strong conclusion with because it cannot be done, you
14 cannot take a pile of defective materials and bind them
15 together somehow and come up with a solid product. I don't
16 know what law that is, but it's common sense, like my friend
17 Dan Mills talked to you about.

18 It is common sense, common enough to where if you're
19 making a house in the woods, if you want the final product to
20 be strong enough to withstand wind, you can't use sticks that
21 are broken; you would use strong materials to expect a strong
22 conclusion.

23 After the trial, whenever that will be -- and you'll
24 have to decide how long that will be because in evidence, you
25 will have a videotape the prosecution introduced into evidence

1 that you're welcome to watch the defense believes that is
2 helpful to the defense.

3 David Waters' book, manuscript is in evidence. I
4 don't how long it will take y'all to read that. Don't know if
5 you would choose to, but it's there. But someday, somebody's
6 going to ask you about the O'Hairs, and they're going to say,
7 okay, you were there, you got to hear every minute, every
8 second of the testimony in that case. We weren't there. Even
9 the reporters, even the press, they're not there all the time.
10 Nobody's there but us and you. What really happened to the
11 O'Hairs?

12 And I say the O'Hairs and Murray, Jon Murray, what
13 really happened? Are they in Romania? Are they buried near a
14 housing project? Are they in some woods? Are they washed
15 from the woods to a creek to the Gulf of Mexico and are now
16 floating in the Red Sea?

17 I don't know what you're going to say. I don't know
18 how you're going to know beyond a reasonable doubt. The
19 reasonable doubt definition talks about would you hesitate to
20 act in the most important of your own life? Would you
21 basically believe that the evidence is so reliable that you
22 can act upon it?

23 Reliability is a very, very important key word. I
24 made a little bit of a joke about the -- about my daughter's
25 connect-the-dots book, and the fact that the prosecution was

1 tending to take an isolated fact and make a lizard foot there,
2 and my point was on a very simple corny basis, we don't know
3 what that means. You can't know beyond a reasonable doubt
4 what that's supposed to be.

5 It's asking you to do something that's impossible.
6 It's impossible. Let me give you an example. Government's
7 Exhibit W79-8 is a shovel. It's got dirt on it. I guess what
8 you're supposed to believe is that it was used to dig a big
9 hole and either put some barrels in it or to put the bodies of
10 three large humans in it and then, cover it up.

11 Now, of the how many law enforcement people were out
12 there in the Hill Country? 50? 30? 80? Soil samples were
13 taken. I don't know why soil samples were taken. I haven't
14 been a law enforcement officer myself, but I would somehow
15 think it would be to see if the soil matched some other soil.

16 Well, there was no test done. The reason was because
17 Dan -- Jeff, Ron or Jeff Waters, the brother, had dug some
18 tomatoes with this. Well, tomatoes, I guess, must account for
19 every bit of that wood. So what we want you to believe,
20 ladies and gentlemen, is that I guess either Gary or somebody
21 went out there in the rocky terrain of West Texas, where a
22 goat can live, and dug a hole big enough to where they buried
23 everybody.

24 And that's not reasonable for you to assume because,
25 then, they brought on the tractor man, the owner of the land,

1 and he said, well, that's pretty hard. You might be able to
2 find a little pocket of soil there, but really, there was a
3 tractor out there. And the key had been left on sometime in
4 1995, and so, maybe Gary, or David Waters, or Danny Fry, or
5 somebody went out there -- and it had a big scoop blade on it,
6 so they must have scooped a big pit and then, put either
7 barrels or bodies in there. And then, they backed off and
8 they piled the dirt on.

9 So being the -- trying to be the clever lawyer that
10 lawyers try to be, I said, well, was there any fresh dirt out
11 there? No. Well, then, what is this? What's this saw blade
12 -- saw deal? There's a saw so they must have sawed them up.
13 Really? Well, where's the evidence of that? Where does that
14 come from? Where is the proof that that's done?

15 They must have put them in barrels because sometime in
16 1995, the owner of the storage unit saw three men, one had
17 long, brown hair, that's supposed to be him. Photographs just
18 as gray -- looks just like him. Medium-length, gray hair.
19 They saw some barrels out there, so they must be in barrels.
20 Well, if they're in barrels, then why would they be thinking
21 that the hogs ate them because they were -- their hands were
22 sticking up?

23 I don't know what happened to them. If I had to get a
24 scale, one of those old fashioned scales with the -- you see
25 them in antique stores. And I put, oh, let's see, Jason

1 Cross, the brain-damaged bank robber, Brian Chase, who in his
2 statement said that Mr. -- that the O'Hairs were in New
3 Zealand. What's that about?

4 And then, the guy who hired the hit man to kill the
5 rival international drug smuggler. And I put them on that --
6 I put all three of them there, and then, I put the assistant
7 to the Southern Baptist Convention, who sat as far as from me
8 to the Court Reporter, and knew the woman's face from having
9 written his doctoral thesis on atheism. And then, I added on
10 there, just to kind of make it fair, oh, Bonnie Jean -- Bonnie
11 Jean Davis, who opens this cocktail place down the street from
12 the Warren Inn and served them Cokes and a beer.

13 And I would not -- I believe that the weight of the
14 credible testimony would be on people who have seen her alive.
15 You know, the IRS begins a case after years of the civil --
16 IRS tried to tag them for back taxes for unreported income for
17 having money put in places where they're not accounting for it
18 properly.

19 And they have brought up innuendos that there has been
20 violence. There might have been. I'll address that in a
21 minute as far as what David Waters might have done, but the
22 odds are that the O'Hairs did what they said they were going
23 to do.

24 Would it be fair -- let me ask you this: Would it be
25 fair having the Austin Police Department missing persons file,

1 which we got -- the defense got a short while ago, opened it
2 up, looked at sightings. There was testimony that the Austin
3 Police Department missing person's file is an active file and
4 have Mr. IRS Agent or Ms. FBI Agent take a look at it, which
5 they didn't, from the evidence, never, and see that a
6 reputable man saw her, telephone, teletype, fax, e-mail,
7 whatever you do in the '90s, and say to the consulate or the
8 FBI office in Romania:

9 "Seems to be a pretty reliable fella over here, lives
10 in Atlanta, Georgia, says he's seen her, would you check the
11 country out and see if you see her or any of the neighboring
12 eastern European countries?"

13 Would that be fair to have them check it out before
14 this man gets accused of killing them if they're dead? Would
15 that kind of make sense that you would be entitled to have
16 them report back to you, "We can't substantiate anything.
17 There is no evidence that this lady was ever here. We've
18 interviewed the minister and he's a nut. We found out he's
19 psychotic. We found out he's a heretic. We found out
20 something."

21 Nothing. You get nothing. And it's not a
22 technicality. It is the backbone of the American
23 jurisprudential criminal justice system. If the prosecution
24 brings the charge, they have to prove it. We don't mind
25 putting on some evidence and we did bring out some evidence

1 through cross-examination before we called our witnesses, but
2 we don't have to prove beyond a reasonable doubt that he did
3 or did not do anything.

4 The prosecution has the burden and the facts aren't
5 there. I made some notes. You know those great big charts,
6 there are about six of them that Mr. Martin put together about
7 the sequence of events. I know you can't see it, but it will
8 help me remember some things.

9 Well, I cut them apart because I wanted to see what
10 wasn't there. Well, there's some interesting things. Ms.
11 Williams brought out on cross-examination that Mr. Martin --
12 if there's a fact that doesn't fit the theory, it's not put in
13 the case. For example, in June of 1995, Jon Murray flew to
14 Florida and went to VCN Vital Records.

15 Now, do you remember hearing anything about that? No,
16 because you didn't. We don't know what that was. Jon got his
17 mom's medicine right at the time that was consistent with them
18 leaving. While they're supposedly kidnapped -- now, keep in
19 mind, Count 1 of this case is that Gary Karr is supposed to be
20 a kidnapper. What a kidnapping. John's renting from
21 Blockbuster.

22 Now, you tell me the last time you've read a book, the
23 last time you've seen a movie, the last time you've seen a TV
24 show where the victims are watching the Blockbuster movies on
25 their check-out card. It's inconsistent with common sense.

1 When's the last time that you saw the kidnappers let Ms.
2 O'Hair and her son walk around the complex of the Warren Inn?

3 Oh, I bet they did. They just said that if you run
4 away or call the police, we'll kill Robin. Now, you know, I
5 want y'all to think about this. Your loved ones, two of your
6 loved ones and you are kidnapped, and you're allowed to walk
7 around. You're allowed to fly to New Jersey. You're allowed
8 to go to the bank by yourself, be at a locked room with a
9 policeman, with a gun, with a radio, and you don't say, "Man,
10 I've been kidnapped. But you've got to get a task force.
11 You've got to get one of those teams, the SWAT team so that
12 they can bust in and save my mom and my sister. You've got to
13 do that because, otherwise, they're going to kill them."

14 Who wouldn't do that? Oh, well, their theory is Jon
15 wouldn't do it because he's just a momma's boy, he's just a
16 passive guy. He's president of the dad'gum national
17 organization. You saw him on the video screen. Anybody who
18 prays is insane. The Pope must be stopped. Anyone who
19 believes in a deity should be locked up. That's no passive
20 man. That's a man that is filled with hate, that is filled
21 with Godlessness and has enough energy to call the police when
22 he's in a locked room with them.

23 Oh, but when he went to New Jersey, he stayed in an
24 expensive hotel. Why it was a castle. No, it wasn't. It was
25 \$145 a night hotel. It was two months before that he stayed

1 at the Four Seasons, which cost twice as much. Their theory
2 is bologna. Not because their fault is, but because they're
3 going to build a structure to sell you with facts that aren't
4 strong. They're weak. They're defective. They're flawed.

5 The last part of this case, the last part of September
6 where there's supposed to be a murder of three people, three
7 murders, and cutting people up or not, depending on which
8 theory they argue, and putting them in barrels or not,
9 depending on which theory they argue, and then, putting them
10 in a subdivision near a housing development or not, depending
11 on which theory they argue, or putting them in the Hill
12 Country or not, depending on which theory they argue.

13 Well, where was old Gary during this period of time?
14 Where was our client, Gary Paul Karr? Well, we can learn that
15 from his ex-wife, Charlene, she saw him in Florida. He was in
16 Florida half of September. Well, all right. That takes care
17 of half of September. Well, all right. Ms. Karr, when was he
18 gone? How long was he here? Or how about Ms. Steffens?
19 What's your recollection?

20 Three or four days. All right. No problem. I
21 realize this was 1995. Which days? Don't know. September
22 the 23rd, September the 23rd, it's not on this chart. I made
23 a mistake. Patti Steffens says that David Waters had her wash
24 dirt out from under his wheel well, tire guards. What's that
25 about? That's not even when they're supposed to have gone to

1 West Texas.

2 Everybody's alive and well, waiting for coins to
3 arrive. September the 28th, gold is -- money is transferred
4 to San Antonio, Frost Bank. Really? Where is Mr. Karr that
5 day? Is he in town? Is he in Austin? Is he in San Antonio?
6 Well, gosh, we don't know. It's not his fault. He doesn't
7 have the evidence, and he can argue till the cows come home.

8 But the facts aren't there because he doesn't know
9 either. What about the 29th? Last call from Jon Murray.
10 Whoa, that automatically means he's dead. No, it doesn't. It
11 means he didn't use the cell phone anymore because they're
12 skipping town. They got a bunch of money. The coin thieves,
13 these kids from San Antonio, they didn't account for all the
14 money. And besides that, they got other money that wasn't
15 accounted for.

16 But nevertheless, where is Gary? Well, you know what?
17 We don't know. It's not his fault. We just don't know.
18 Well, then, let's look at the big day, September 30th, Gary
19 Karr rented -- what did he do? No. He was at Patti Steffens
20 late in the afternoon, and then, the men left and weren't
21 there that night.

22 Well, what happened on the 30th? Is that when the
23 people were supposed to be killed, if they were killed? Jon
24 Murray's Towncar turned in. Maybe that was because Jon Murray
25 was leaving town. But if not, what did happen? You're going

1 to take the blood from three large people? I think there's
2 testimony it's about five quarts of blood per body. Fifteen
3 quarts of blood and some guy's going to come in with this
4 goofy insect sprayer and make it to where there's no evidence
5 of blood?

6 Did you hear Patti talk about how he had a fire hose
7 that he was washing it down with? You're going to wash out 15
8 quarts of blood to where the FBI can't find it with that? I
9 don't think y'all are going to buy that. I don't think it
10 makes sense. I don't think it's reliable. I don't think it
11 is proof beyond a reasonable doubt.

12 But Gary Karr, who played tennis and wore tennis
13 shoes, the kind with the smooth soles that you play tennis
14 with. Patti Jo Steffens said that on that day, she saw a sack
15 and it had some tennis shoes on them. Were they the kind of
16 tennis shoes you'd ever seen Gary Karr wear? No, they were
17 different.

18 He wore tennis shoes. Does that mean that they're
19 dead? I don't have any explanation for that. I don't even
20 know to what extent the testimony's truthful. But just think
21 about it. Just think about it because that could be really
22 significant.

23 If there were -- if there were some men, whether it
24 was Mr. Waters, or Mr. Fry, or Mr. Osborne, standing
25 ankle-deep in blood, in a storage shed, do you think that our

1 FBI could find a little evidence of some blood on the cement?
2 I do, too.

3 I want to point out a couple of things. Robin was
4 upset. Several people testified to her voice on the
5 telephone. Well, from other testimony, there's no reason to
6 think that her action was inconsistent with how she would feel
7 if she was leaving her home for another destination. And
8 there is certainly no evidence to suggest that it would be
9 inconsistent with her leaving the dogs that she cared for.

10 And coincidence, of all coincidences, the two cocker
11 spaniels were later missing from the fenced-in area. Danny
12 Fry was, by all accounts, a drunk and unreliable and now he's
13 dead, and the only evidence we have is that on October 1st or
14 2nd that David Waters said that he was leaving for Arkansas
15 and was drunk, and then, I think, on October 2nd, his body was
16 found a little bit northwest of Dallas.

17 There is no evidence that Gary Karr was involved with
18 the death of Danny Fry. There is zero inference that Gary
19 Karr was involved with the death of Danny Fry. There is no
20 hint of evidence from any witness that he was involved with
21 his death.

22 The accusations in the charge all have several words
23 in them that are very important. Mr. Karr is accused in Count
24 1, 2, 3, 4, 5 with kidnapping either by forcibly holding them
25 or tricking them. He's accused of extorting money from them.

1 He's accused of moving money, watches, diamonds in interstate
2 commerce. He's accused of traveling in interstate commerce
3 with stolen property.

4 Every one of those counts he's not guilty of because
5 every one of those counts say knowingly, meaning
6 intentionally, voluntarily. Several of them say willfully,
7 which means is a higher burden, intent to break the criminal
8 law, and every one of those counts have failed to prove that
9 his actions were intending to be breaking the law.

10 For example, he's accused of flying to New Jersey and
11 that's supposed to be a kidnapping. Well, it's inconsistent
12 with the kidnapping is all I can say, the bottom line. You
13 have before you -- you haven't read it yet, and I don't have
14 time to read it to you -- his written statement. He was
15 interviewed by law enforcement officers.

16 He had the right to a lawyer, he had the right to say
17 the same two words that Madalyn O'Hair said to the IRS. He
18 had the right to do anything, but he voluntarily let them in
19 his house. And he signed a statement. At the end of each
20 statement, he basically said this is to the best of my
21 recollection.

22 And in his statements he said, "I went there to help
23 David Waters move the O'Hairs. They wanted to leave the IRS.
24 They were afraid they were going to get in criminal trouble.
25 I told David Waters that I was on parole and that I wanted

1 nothing to do with anything that would be violating the law."
2 Mere presence at the scene of the crime is not enough to
3 convict someone if there was a crime.

4 This is squeezed down. It's -- the one you'll have is
5 on two pages. The defense contends that there is reasonable
6 doubt -- oh, I don't have it up. The defense contends that
7 there is reasonable doubt about the five accusations. And the
8 defense contends that the proper verdict would be not guilty,
9 which means there has not been proof beyond a reasonable doubt
10 that a crime was committed.

11 Did you kill a certain person would be not applicable
12 because he is not guilty of causing a death of anybody. Oh, I
13 forgot this. This was introduced into evidence by the
14 prosecution, and it's supposed to be relevant to this case.
15 The Poor Man's James Bond. It was found in David Waters'
16 house. And I was looking through it, and I noticed that there
17 was a chapter on how to make bombs.

18 Well, maybe they were blown up, but, you know, there's
19 no evidence of that. What's this? There's a chapter in here
20 on how to make a big fire, on how to make a silencer, on how
21 to make fire crackers. Maybe -- there's no evidence. A
22 couple of thousand years ago, a man that had a lot more sense
23 than I do said that you cannot build a house that needs a
24 solid foundation on sand for pretty common sense reasons.

25 He may have been speaking a little bit in a different

1 context, but the principle remains the same. You have to
2 build it on rock. You have to build it on something solid.
3 You have to build it with materials that make sense.

4 Mr. Carruth is going to very eloquently -- and I enjoy
5 listening to him -- discuss the facts the most positive way
6 that the prosecution can present them. But the bottom line is
7 that this case can be put to bed with several words, the
8 proof, the wood, the structure just isn't here. Maybe some
9 jury will get to fry David Waters. Maybe that will be
10 different. I don't know.

11 Maybe the O'Hairs will be found. Thank you for your
12 time. I know that it's intense and I know that your job is
13 almost -- well, I don't want to say it's just getting started,
14 but a very important part of it is. And we appreciate it very
15 much.

16 THE COURT: Mr. Carruth.

17 GOVERNMENT'S CLOSING STATEMENTS

18 MR. CARRUTH: Thank you, your Honor. May it please
19 the Court. Counsel for the defense.

20 Members of the jury, let's get one thing straight
21 before we start. This is not a murder case. Mr. Karr has not
22 been indicted and has not been tried for murder or for
23 conspiracy to commit murder. He was not accused of causing
24 the death of any person. He is charged in five counts with
25 conspiracy to kidnap, with conspiracy to commit robbery or

1 extortion affecting interstate commerce, with traveling in
2 interstate commerce to commit a crime of violence to further
3 an unlawful activity, with conspiracy to engage in a monetary
4 transaction in criminally derived property, and with the
5 interstate transportation of stolen property.

6 The only reason that the death of any person becomes
7 relevant in this case is because one of the counts, Count 3,
8 provides that if you find Mr. Karr guilty of traveling in
9 interstate commerce, as you know he did, to commit a crime of
10 violence to further an unlawful activity, then, Judge Sparks
11 has asked you to answer a special issue as to whether or not
12 the offense resulted in the death of another person, not
13 whether Mr. Karr killed somebody else or whether he hired
14 someone to kill somebody else. It's just did someone die as a
15 result of the offense, because this may affect the punishment
16 imposed, if there should be a conviction in this case. And
17 that's all you're asked to determine. This is not a murder
18 case.

19 So when the defense gets up there and criticizes an
20 Internal Revenue Criminal Investigation Division agent for
21 what he did or didn't do, he's not a homicide investigator.
22 This is not a homicide or murder case. So don't be dissuaded
23 by what the defense has told you.

24 Keep in mind what the charge tells you on the law of
25 conspiracy in acting together with another person to commit a

1 criminal offense. And I would commit to your reading four
2 pieces of evidence which are very significant. One has been
3 alluded to by Mr. Mills for the defense and that is the
4 voluntary statement of Mr. Karr, the defendant. There were
5 actually two of them. One's an eight-page statement, the
6 other's a two-page supplement.

7 So you have ten pages of a confession or statement, as
8 you want to call it, and there in evidence is W -- Exhibit
9 W100-1 and 2. Please, before you start your deliberations
10 today, sit down and read that statement because in that
11 statement, Mr. Karr admits many of the elements of the crime
12 charged against him in the indictment on which Judge Sparks
13 has instructed you.

14 He admits renting the three vans, he admits taking
15 Robin's Porsche to the Austin Airport and abandoning it in an
16 airport parking lot to make it appear they have flown out of
17 town. And what he says in this statement will help you and,
18 also, what he does not say is very important in considering
19 your deliberations because he tends to minimize his role in
20 the offense and to blame David Waters or someone else when it
21 really gets tough.

22 For example, he claims to have no knowledge about a
23 second warehouse at the Public Storage in Austin, and he says
24 he's never -- does not know Gerald Osborne or Chico. Well,
25 then, why is he talking about Chico to the inmates? And by

1 the way, that's the second important piece of evidence I want
2 you to review are the 15 pages of handwritten notes of inmate
3 Jason Cross, which are in evidence as Government Exhibit
4 W97-1.

5 Now, the defense can get up here all they want to and
6 lambast these inmate witnesses. But when they do that and
7 when they demean them and when they're critical of them, I
8 want you to remember one thing: We did not pick these
9 witnesses. These are Mr. Karr's friends and associates. He
10 associated himself with them when he was incarcerated and
11 chose to reveal certain confidences to them.

12 What did somebody say about birds of a feather? They
13 flock together. You also need to read the July 1995 edition
14 of the Atheist Newsletter. There are two copies of that in
15 evidence. One is W9-1, which was introduced by Henry Morgan
16 who told you his name was formerly Henry Schmuck, and the
17 other one is W77-52, it came in through Mr. Parelli, the FBI
18 agent who told you that it was found during the search of
19 David Waters' apartment.

20 So we know as to reasonably conclude on common sense
21 that Mr. Waters read that. And once you read that July 1995
22 Atheist Newsletter, you will learn that Mrs. O'Hair was in
23 fear of her life from David Waters. She tells you in there
24 about how she found out about his criminal past after he stole
25 money from her and after he was prosecuted.

1 And how he -- she erected a security fence around the
2 headquarters and how she sought a restraining order from a
3 local state judge. And, ladies and gentlemen, once you read
4 that newsletter, that will remove forever any doubt you may
5 have about whether Mrs. O'Hair would ever voluntarily go
6 anywhere with Mr. Waters. That newsletter's very important.

7 And then, if you still have any doubt at all, much
8 less a reasonable doubt, I urge you to listen to the tape
9 recording one more time of Mr. Karr and his ex-wife, Charlene,
10 which is in evidence as Government Exhibit W16-1. How can Mr.
11 Mills, for the defense, in good conscience, stand up here and
12 even suggest to you that the O'Hairs are alive and fled the
13 country when Mr. Karr, the defendant, was heard arguing on
14 that tape with his wife about where he told her the bodies
15 were buried?

16 That's inconceivable. It's inconsistent. The defense
17 can't have it both ways. They want you to say the O'Hairs
18 fled the country, but if they didn't, Mr. Karr didn't have
19 anything to do with their demise. He can't have it both ways.
20 The evidence does not support either of those theories.

21 The evidence supports the theory that Mr. Karr
22 knowingly participated with Mr. Waters, Mr. Fry and other
23 persons in a conspiracy to abduct the O'Hairs, to hold them
24 against their will, and to extort money from them, to rob
25 them, and ultimately, he ends up with the three Rolex watches.

1 What, they don't tell time in Romania?

2 He admits in his statement that he got those three
3 Rolex watches after he and Charlene had checked out of the
4 Four Seasons Hotel. That David Waters said, "Here, these
5 belong to the O'Hairs, but they didn't want them anymore. Get
6 rid of them." And he transports them in interstate commerce
7 back to Florida and then, to Chicago, where he gave one to his
8 wife, and that's all in evidence.

9 There's a lot of evidence and a lot of exhibits for
10 you to review, but if you'll just take the flowcharts that
11 Agent Martin testified about, follow the time line, follow the
12 flow of the money. Remember, in opening statements a couple
13 of weeks ago, I told you if you followed the money in this
14 case, you could figure out what happened?

15 The O'Hairs didn't get into this money to flee the
16 country. The conspirators, including Mr. Karr and Mr. Waters
17 and others, ended up with the money. The testimony that you
18 have heard during the past two weeks tells about three men,
19 none of whom had a full-time employment, who come to Austin
20 for different reasons.

21 Mr. Fry tells his fiance, Lisa Jones, that David
22 Waters has offered him a big deal in the construction
23 business. Mr. Karr tells his ex-wife, Charlene, that he's
24 going to Texas to play in a big card game, okay? Neither one
25 of them say up front that they're going to do a security guard

1 job for the O'Hairs.

2 Now, why would they lie? Why would they lie? Why
3 would they tell different stories? Why would Mr. Karr tell
4 different stories to Art Miller? When Art Miller told him he
5 didn't believe the gambling story, then he relayed to him that
6 he was actually hired as a bodyguard. And then, when Mr.
7 Miller heard the story, he felt so bad about Mr. Karr because
8 he was his friend and employer and he suggested he see an
9 attorney.

10 And if you'll read in that statement of Mr. Karr,
11 he'll tell you what that attorney told him. And I'll let you
12 find that out for yourself. But we have three men who come to
13 stay with David Waters in his apartment. They don't have any
14 jobs. You heard the testimony. Mr. Waters was not employed,
15 Mr. Fry was not employed, Mr. Karr was not employed except for
16 helping Mr. Miller fix up his house.

17 And, yet, all of a sudden, after coming to Texas, all
18 of these three men are wire transferring or giving thousands
19 of dollars in cash to their women. Where did they get the
20 money? Where did he get a \$6,000 diamond? Where did he get
21 the three Rolex watches?

22 And in his instruction, Judge Sparks has told you that
23 in order to find the defendant guilty of conspiracy, it does
24 not matter whether you believe and find from the evidence that
25 they took them by force, at gunpoint, or whether they

1 inveigled or lured the O'Hairs.

2 Come on, go with us, we'll help you leave the country,
3 sure. And then, they took advantage of them and took their
4 money. Regardless, it doesn't matter for a conspiracy. A
5 conspiracy is a partnership in crime in which each conspirator
6 becomes the agent of the other conspirator. And we don't
7 allege that Mr. Karr acted alone in this case. That's why
8 he's charged with conspiracy.

9 And if you follow the money and follow the time line,
10 you will see exactly what happened in this case. Now, Ms.
11 Williams said that science failed the government in this case.
12 It is amazing, ladies and gentlemen, and this is Government
13 Exhibit W64-6, based upon the evidence, this was a piece of
14 angle iron that was on the floor of the storage unit where Mr.
15 Karr admitted to a roommate in jail that he and Danny Fry and
16 David Waters cut up the bodies of the O'Hairs.

17 It is amazing after that thing was sprayed with Clorox
18 that any evidence at all was found. And yet, if you look on
19 the back of this angle iron, you'll see where the chemist
20 found the blood, the DNA. And what was the testimony you
21 heard? Bleach degrades DNA. That's why they used it. It's
22 amazing that we found any blood at all in that storage unit.
23 And it is consistent with two of the three O'Hair family
24 members.

25 Ms. Steffens told you about seeing a bow saw and a

1 shovel in the trunk of David Waters' Cadillac during the Pecan
2 Street Festival in 1995. A Cadillac he had purchased a week
3 or two before for \$13,000 cash. Where did he get the money?
4 Follow the money. It came from the O'Hairs.

5 Now, bear in mind, this is not a murder case. We're
6 not here to prove the exact manner and means by which the
7 O'Hairs or Danny Fry were killed. But we do know that Danny
8 Fry's lifeless body was found on the banks of the Trinity
9 River in East Dallas County, Texas, just barely four hours
10 after Mr. Karr rented that third van. And just enough miles
11 on that van on the round trip to make it up from Austin to
12 Dallas, where Mr. Fry's headless, handless corpse was found at
13 about 2:30 in the afternoon.

14 If this is a legitimate enterprise to help the O'Hairs
15 flee the country and to be bodyguards, why does Mr. Fry have
16 to end up as a headless, handless corpse? Answer that
17 question. And you'll find the defendant guilty as charged on
18 all counts in the indictment.

19 And what about the little things, like, your common
20 sense, as counsel has suggested you use and I concur? Does
21 your common sense tell you that you're going to spend \$1100 to
22 fix the air conditioning on your car if you plan to abandon it
23 at the airport a couple of days later, to make it look like
24 you've gone out of town? Does common sense tell you that
25 you're going to flee the country to avoid the IRS when your

1 tax lawyer has already negotiated a settlement with the IRS,
2 allowing you to keep your nonprofit tax exempt status and to
3 pay off your indebtedness in installments?

4 And sure, there may have been, at one time, a plan by
5 the O'Hairs to flee to New Zealand. They looked into it
6 certainly, we know that from the evidence. That was back in
7 1993, when they were involved in the Truth Seeker trial. But
8 they don't have any reason to flee because of that because
9 they were -- they won the Truth Seeker trial.

10 But David Waters, as a result of having worked there
11 as the office manager, knew about this plan. He helped
12 catalog and pack the books to move the multi-million-dollar
13 Atheist Library, and he said, "This is a chance for me to
14 separate the O'Hairs from their money."

15 And after that July '95 newsletter came out, you heard
16 Patti Jo Steffens say he decided to get even and he fantasized
17 about hurting Madalyn and torturing her and snipping off her
18 toes, and the evidence suggested he did just that. And that
19 this defendant knowingly and willfully joined in that
20 conspiracy, and he did it for money. He did it because he was
21 greedy. And Mr. Waters did it because he wanted revenge.

22 That's why he didn't appear to be too upset when the
23 half-million dollars turned up missing from the storage unit.
24 He was fairly nonchalant because, in addition to that, they
25 got nearly \$90,000 from the O'Hairs by liquidating their

1 assets in their bank accounts and selling their cars. And Mr.
2 Karr was a part of this conspiracy from the get-go.

3 Now, there's a lot of evidence in this case. I could
4 stand up here and talk to you for hours, but I'm not going to
5 do that because you have the evidence. You have the law that
6 Judge Sparks gave you, and you can take it all back and
7 resolve it to your own satisfaction. But I assure you, ladies
8 and gentlemen, that the evidence is more than sufficient for
9 you to find the defendant, Mr. Karr, guilty under all five
10 counts of the indictment.

11 In fact, the circumstantial evidence in this case is
12 overwhelming. The guilt -- the evidence of his guilt is
13 overwhelming. And the Judge tells you that you do not have to
14 distinguish between circumstantial and direct evidence. You
15 can weigh it the same in the scales of justice.

16 My final plea to you in this case, ladies and
17 gentlemen of the jury, will be the final words that were ever
18 spoken to Ellen Johnson by a very distraught Robin Murray
19 O'Hair, when she said, "I know you'll do the right thing."
20 Thank you.

21 THE COURT: All right, members of the jury, I'm going
22 to put you into the jury room. But at this point in time, I
23 want Ms. Rosy Amaro, Mr. Gary Leasman, and Ms. Susan Williams,
24 do y'all have anything in the jury room? All right. I'll
25 have you accompany the Security Guard, Mr. Mace. Get your

1 materials and come back to the courtroom. We'll all stand at
2 ease.

3 Okay. If y'all will just have a seat, the three of
4 you, right there, behind Mr. Mills in those three seats that
5 are there. And if the two of you will come.

6 THE JUROR: Here's the notebook.

7 THE COURT: Okay. Well, that's fine.

8 THE CLERK: Each of you raise your right hand, please.
9 Do you and each of you solemnly swear or affirm that you'll
10 keep this jury during their retirement in a convenient place,
11 removed from the presence of others, and that you will not
12 without leave of court allow anyone to speak to them and that
13 you will not without leave of court communicate with them
14 yourself except to ascertain whether or not they have reached
15 a verdict, and to attend to their desire for necessities?
16 That you will well and faithfully discharge your duties as
17 Bailiffs of this court, so help you God?

18 THE COURT SECURITY OFFICERS: I will.

19 THE COURT: All right, members of the jury, I'm going
20 to reverse my instructions to you of the last three weeks and
21 tell you now is the time to deliberate. Remember, no
22 deliberations unless all twelve of you are present. If you
23 take a break to stretch, that's up to you, but no
24 deliberations until all twelve. Take a bathroom break, talk
25 about anything else until you're back together where you can

1 deliberate the evidence.

2 All right. All rise for the jury.

3 (Jury retires to deliberate.)

4 THE COURT: Ms. Amaro, Ms. Williams and Mr. Leasman,
5 y'all have a difficult job still ahead of you. You'll be
6 alternate jurors. We cannot try a case that takes as long and
7 as much of your expense to the taxpayer as this one without
8 alternate jurors. But you're not going to be discharged. I'm
9 going to place you in the custody of the Security Agent.

10 Y'all will get to stay here. You can go get your
11 lunch, but the hard part is you cannot discuss this case among
12 yourselves. You follow the instructions that I've given to
13 you. I hope you've got some reading material, if not, maybe
14 the Bailiff can get you some reading material, but the
15 important thing is relax. I want you -- you're going to be
16 here in a private room here in the courthouse, but do not
17 discuss the case under any circumstances. Do you understand
18 that?

19 THE JURORS: Yes.

20 THE COURT: All right. If y'all will rise.

21 (Jurors exited.)

22 THE COURT: Counsel, I have arranged for lunch to be
23 served during the deliberations. So the next time that I will
24 interview -- or interrupt the jury will be between 5:00 and
25 6:00. If they continue to deliberate at that time, I will ask

1 them if they wish to continue deliberating or if they wish to
2 return tomorrow under the agreement that y'all have made that
3 they can go home this evening.

4 Other than that, the communication will be up to the
5 jury. If there are any communications or questions that I
6 want you to be available so that Ms. Sims can get you very
7 quickly. Now, Mr. Mills, you indicated to the jury that they
8 could listen to the tape on a tape recorder, so have it handy.
9 I expect that will be the next thing.

10 If you wish to check on all the exhibits or you
11 haven't done that already, now is the last time. They'll be
12 going to the jury room along with the indictment, the legal
13 instructions and the verdict form. All right. We're in
14 recess.

15 (Proceedings adjourned.)

16
17
18
19
20
21
22
23
24
25